

STATE OF SOUTH CAROLINA  
In the Supreme Court

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CERTIORARI TO CHARLESTON COUNTY  
Court of Common Pleas  
Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2018-002156

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**RECEIVED**

DEC 16 2019

S.C. SUPREME COURT

KEENAN COAKLEY,

PETITIONER,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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## **RESPONDENT'S ISSUES PRESENTED**

Did the post-conviction relief court properly dismiss Petitioner's application where the Trial Court did not instruct the jury they had an obligation to seek the truth and where the Trial Court instructed the jury thirteen times that the State had the burden of proof?

Did the post-conviction relief court properly dismiss Petitioner's application where trial counsel was not deficient for failing to object to a proper circumstantial evidence charge given by the Trial court?

Did the post-conviction relief court properly dismissed Petitioner's application where the Trial Court gave an adequate charge with regard to multiple defendants and the jury definitively understood the charge as given?

## STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is any evidence in the record to support them. *Smalls*, 422 S.C. at 179, 810 S.E.2d at 839-40 (citing *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. *Id.* Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## STATEMENT OF CASE

In April of 2011, the Charleston County Grand Jury indicted Petitioner, Keenan Coakley, for armed robbery, indictment #2011-GS-10-2078. On December 2, 2013, Petitioner with two co-defendants, Jarrett Graddick and Kevin Smalls, proceeded to jury trial before the Honorable R. Markley Dennis, Jr. The jury returned verdicts of guilty as to Petitioner and co-defendant, Graddick. Co-defendant Smalls was allowed to enter a guilty plea to accessory after the fact. Judge Dennis sentenced Petitioner to sixteen (16) years in prison. The judge sentenced Graddick to twenty (20) years in prison. The judge sentenced Smalls to sixty (60) days to be followed by five (5) years of probation. A timely notice of intent to appeal was filed and the direct appeal perfected. The South Carolina Court of Appeals affirmed the sentence and conviction. *State v. Coakley*. Op. No. 2015-UP-412 (S.C. Ct.App. Filed August 12, 2015).

On November 2, 2015, Petitioner filed an application for post-conviction relief [PCR]. The State filed a return on June 9, 2016. Petitioner, through counsel, filed an amendment to the PCR application on July 18, 2017. On October 2, 2018, an evidentiary hearing was held before the Honorable Michael G. Nettles. James K. Falk represented Petitioner at the PCR hearing. Kelly Oppenheimer represented the State. In a written order signed November 19, 2018, Judge Nettles denied relief and dismissed the application. A timely notice of intent to appeal was served on December 6, 2018. This appeal follows.

## RELEVANT FACTS

Two men, wearing cloths over their faces and ball caps, entered a cell phone store on September 15, 2010, and stole the cashbox containing approximately \$1,000. At least one of the men had a gun. The men entered and exited through a back door, and the store owner saw them run into a field behind the store. The owner testified there was a uniquely marked \$100 bill in the cashbox. Tr. 147-69.

The store employees ran out of the store when the men entered, and yelled for someone to call 911 because they were being robbed. A woman in the parking lot called 911, and noticed a man “looking very nervous” standing next to a red and black car. After the employees ran out, the man got into the car and drove off. As the car backed up, the woman got the license tag number and gave it to police. Tr. 226-31.

A man (“Davis”) who lived on a dead end road (Sam Edwards Road) near the shopping mall testified he saw a red and black car drive down the road twice on the day of the robbery. The first time there were four people in the car, but when the car drove out, two of the passengers were on foot. About half an hour later, the car came back, and the two men who left on foot earlier ran out on the road. One of the men was carrying something under his coat, and Davis saw him throw it in a ditch as he ran. The men got into the red and black car, which left very fast. When police arrived a short time later, Davis showed them where the man threw the item, which was subsequently identified as the cashbox from the cell phone store, in the ditch. Tr. 294-308, 349-50.

Officer Joseph Zeitner of the Mount Pleasant Police Department testified he heard the dispatch regarding an armed robbery, with a description and license tag number of the red and black car. He almost immediately saw the car cross an intersection in front of him and initiated a

traffic stop after he was able to verify the license tag number. There were four men in the car, and he ordered them to put their hands up. Tr. 362-66.

After a back-up officer arrived, Zeitner started getting the occupants out of the vehicle, beginning with the driver (Kevin Smalls). While he was getting Smalls out, the two males in the back seat, subsequently identified as Petitioner and co-defendant Graddick were moving around. Graddick, who was seated behind the driver, dropped down out of Zeitner's sight three times, and Petitioner, seated behind the front passenger seat, tried to get into the front seat of the car. The officers ordered Graddick out of the car, and had Petitioner slide across the backseat and exit on the driver's side. They then got the front seat passenger (Brian Mazyck) out of the car. Tr. 366-75.

A police supervisor who assisted in the traffic stop testified that after the occupants were removed from the car, officers moved it out of the roadway into a parking lot to secure it and wait on the crime scene technicians. When she looked into the car, she saw a Glock handgun on the passenger side, and money in the back seat arm rest. Tr. 386-97.

The crime scene/evidence technician testified he recovered some shirts turned inside-out, a black pair of pants, a belt, and gloves from inside the car. He also recovered cash (\$1,095) from the backseat's center console, and a forty-five caliber Glock handgun from under the back of the front passenger seat. Tr. 426-45, 449-55. The cash included the uniquely marked bill described by the store owner. He then responded to the location where the cashbox was found, photographed the location, and retrieved the cashbox as evidence. Tr. 454-59.

Mazyck testified for the State, and recounted the events on September 15, 2010, leading up to the traffic stop. He stated he was in the car with Smalls in the shopping mall parking lot when the store owner yelled the store had been robbed, but Smalls told him not to "get involved."

Smalls then drove out of the parking lot at “a nice little speed,” went to Sam Edwards Road, went to the end of Sam Edwards Road and turned around. Mazyck saw Petitioner and Graddick come out of a path and wave Smalls down. They were wearing gloves and had something covering the lower part of their faces, and one of them threw the cashbox down before they got in the car. Petitioner got in the backseat behind Mazyck, and Graddick got in the backseat behind Smalls. Tr. 485-510.

Mazyck testified Petitioner and Graddick started taking off the clothes they had on when they got in the car, and putting on clothes laying on the backseat, and he saw a gun under the backseat armrest. After Zeitner stopped the car and ordered them to get out, Petitioner said: “Go! I’m not going back to jail.” Tr. 518-21.

#### **ARGUMENT**

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

**The post-conviction relief court properly dismissed Petitioner's application where the Trial Court did not instruct the jury they had an obligation to seek the truth and where the Trial Court instructed the jury thirteen times that the State had the burden of proof**

Petitioner alleges trial counsel was ineffective for failing to object when the judge defined reasonable doubt to the jury as, "... a doubt that would make an honest, sincere, conscientious juror, who's searching for the truth in the case to hesitate to act or take some action." Counsel was not deficient for failing to object where the trial court's instruction did not tell the jury that they had an obligation to seek the truth and where the court instructed the jury thirteen separate times that the State had the burden of proving Petitioner guilty beyond a reasonable doubt.

When analyzing the propriety of jury instructions for error on appeal or on collateral review to determine whether counsel should have objected to a purportedly impermissible charge, the reviewing court must view the jury charge as a whole and in light of the evidence and issues from trial. *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see *Todd v. State*, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant's due process rights have been violated."); see also *Cupp v. Naughten*, 414 U.S. 141, 146-47 (1973) ("[A] single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge."). The appropriate test for reviewing a jury charge involves determining whether there is

a reasonable likelihood the jury applied the charge in an unconstitutional manner. *Estelle v. McGuire*, 502 U.S. 62, 71 (1991). “In determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in way that violates the Constitution.” *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 739 (2009) (citing *Todd*, 355 S.C. at 399, 585 S.E.2d at 306).

One of the fundamental functions of the trial process in both criminal and civil cases is to discover the truth. *See State v. Wren*, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996) (“A trial is a search for the truth[.]”); *see also Portuondo v. Agard*, 529 U.S. 61, 73 (2000) (stating “the central function of [a] trial . . . is to discover the truth”); *see generally Carella v. California*, 491 U.S. 263, 265 (1989) (explaining burden-relieving jury instructions “subvert the presumption of innocence accorded to accused persons and also invade the truth-finding task assigned solely to juries in criminal cases”); *Gardner v. Florida*, 403 U.S. 349, 360 (1977) (“[T]he debate between adversaries is often essential to the truth-seeking function of trials[.]”).

As part of this truth-seeking process, the State is constitutionally required to prove a criminal defendant’s guilt for every element of a criminal offense beyond a reasonable doubt while a defendant is ordinarily not required to prove anything at all. *In re Winship*, 397 U.S. 358, 364 (1970); *see Burr v. Florida*, 474 U.S. 879, 880 (1985) (“[T]he beacon of the truth-seeking process in criminal cases is not absolute certainty, but the ‘reasonable doubt’ standard[.]”); *see also State v. Brewer*, 411 S.C. 401, 408, 768 S.E.2d 656, 659 (2015) (reiterating a criminal defendant has no duty to prove his or her own innocence); *see generally State v. Attardo*, 263 S.C. 546, 552, 211 S.E.2d 868, 871 (1975) (recognizing the burden may be on the defendant to establish a defense to a criminal charge only in limited circumstances). In *State v. Daniels*, however, the Supreme Court

instructed trial courts “to remove any suggestion from his general sessions charges that a criminal jury’s duty is to return a verdict that is ‘just’ or ‘fair’ to all parties” when the trial court charged the jury “it was his ‘confirmed opinion’ that the verdict would represent ‘truth and justice for all parties.’” 401 S.C. 255-56, 737 S.E.2d 473, 475 (2012). The Supreme Court further cautioned “such a charge could effectively alter the jury’s perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State’s burden to prove the defendant’s guilty beyond a reasonable doubt.” *Id.* at 256, 737 S.E.2d at 475.

Here, unlike in *Daniels*, the trial court never indicated to the jury they had an obligation to seek the truth. In *Daniels*, the trial court instructed the jury “whatever verdict you reach will represent truth and justice for all parties that are involved in the case” and “You and I are acting for the community and that is why we see to it that this trial is fair and the verdict is just.” *Daniels*, 401 S.C. at 257-58, 737 S.E.2d at 476. The instruction by the trial court in *Daniels* clearly could be construed as burden shifting and could confuse the jury. The language from *Daniels* is significantly stronger and does not align with that of the case at hand. Indeed, the trial court never instructed the jury Petitioner had to prove anything. Rather, the trial court merely stated: “A reasonable doubt is a doubt that would make an honest, sincere, conscientious juror, who’s searching for the truth in the case to hesitate to act or to take some action.” Tr. 862. Such an instruction does not indicate there is an obligation to seek the truth, nor does it enumerate that the role of the jury is to seek justice. Here, the instruction is a single reference to searching for the truth and was not given in a way that would improperly shift the burden of proof to Petitioner, therefore differing itself from the alleged same constitutional concerns found in *Daniels*.

Although, the Supreme Court has repeatedly cautioned trial courts to avoid using language that instructs the jury to “seek the truth” due to the risk such language could **potentially** shift the

burden of proof to the defendant in an unconstitutional manner, it has specifically declined to hold any mention of “the truth” to a jury automatically constitutes reversible error or is *per se* unconstitutional. See *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 739 (2009) (citing *State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998) (“Trial courts should avoid using ‘seek’ language in instructing the jury because such language is unnecessary and runs the risk of unconstitutionally shifting the burden of proof.”); *State v. Aleksey*, 343 S.C. 20, 27-28, 538 S.E.2d 248, 251 (2000) (quotations omitted) (noting jury instructions on reasonable doubt that charge the jury to “seek the truth” are disfavored because they the risk of unconstitutionally shifting the burden of proof to a defendant.); *State v. Hoffman*, 312 S.C. 386, 395, 440 S.E.2d 869, 874 (1994) (holding a reasonable doubt jury charge that included “seeking the truth” language constituted a correct definition of reasonable doubt when read as a whole and did not shift the burden of proof to the defendant).

The State recognizes this Court has issued a number of opinions disfavoring trial court’s from using seek the truth language in jury instructions, however, the mere mention of this language does not merit reversal unless its usage improper shifts the burden to the defendant. This Court has further recognized that the use of this language can be cured by the trial court if it informs the jury throughout the instruction that the State has the burden of proving the defendant guilty beyond a reasonable doubt.

Indeed, in *Aleksey*, the Court noted: “Although settled law disfavors instructing jurors to seek the truth in some contexts because it might be misleading as to the burden of proof, we decline to hold any mention of ‘the truth’ in jury charges is unconstitutional.” 343 S.C. at 28, n. 2, 538 S.E.2d at 252. Furthermore, the Court has declined to hold such language was reversible error when the trial court instructs the jury numerous times throughout its charge that the State has the

burden of proving a defendant guilty beyond a reasonable doubt. *See Needs*, 333 S.C. at 154, 508 S.E.2d at 867 (finding the trial court’s use of the “seeking the truth” language constituted harmless error when the trial court instructed the jury twenty-six times that the State had the burden of proving a defendant guilty beyond a reasonable doubt). Here, the trial court instructed the jury **thirteen** times that the State had the burden of proving Petitioner guilty beyond a reasonable doubt. *See* Tr. 860, l. 5-6; 861, l. 24-25; 869, l. 3; 872, l. 17-20; 873, l. 2-3; 873, l. 15-17; 875, l. 8-11; 876, l. 1-4; 876, l. 18-20; 877, l. 8-11; 877, l. 13-14; 879, l. 21-22; 880, l. 6-7. This case is similar to the cases cited by both the State and Petitioner<sup>1</sup> where this Court found the improper instruction to be harmless due to the trial court’s repeated instructions to the jury that it is in fact the State’s burden to prove the defendant’s guilt beyond a reasonable doubt.

Ultimately, Petitioner has failed to show how counsel was deficient for failing to object to a jury instruction by the court that did not improperly shift the burden and has failed to show how he was prejudiced where the court repeatedly instructed the jury that it was the State’s burden of proof. Petitioner has failed to differentiate this case from the cases cited above where this court found any potential error to be harmless, therefore, this Court should dismiss this allegation and uphold the findings of the post-conviction relief court.

**The post-conviction relief court properly dismissed Petitioner’s application where trial counsel was not deficient for failing to object to a proper circumstantial evidence charge given by the trial court**

Petitioner alleges trial counsel was ineffective for failing to object to the circumstantial evidence charge given by the trial court. Counsel was not deficient for failing to object to a

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<sup>1</sup> The State recognizes that Petitioner cites to both *State v. Beaty*, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) and *State v. Patterson*, 425 S.C. 500, 511, 823 S.E.2d 217, 223-24 (Ct. App. 2019) in support of their argument that this case is different than those cited earlier. However, these cases were decided after the case at hand and should not be considered in determining the standard at the time of this trial.

proper circumstantial evidence instruction given by the trial court and Petitioner has failed to show any prejudice resulting from the alleged deficiency, simply stating in a conclusory fashion that he was prejudiced because the instruction was allegedly erroneous. Petitioner has failed to meet his burden in regards to both the deficiency and prejudice prongs of *Strickland*.

“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.” *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (2003) (internal citations omitted). In *State v. Grippon*, the Supreme Court recommended the following jury instruction on circumstantial evidence be given once a proper reasonable doubt instruction is given:

There are two types of evidence which are generally presented during a trial-direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997). Thereafter, the Court held the aforementioned recommended language “is the sole and exclusive charge to be given in circumstantial evidence cases in this state.” *State v. Cherry*, 361 S.C. 588, 601, 606 S.E.2d 475, 482 (2004). Recently, however, the Court recommended language differing from that prescribed in *Grippon*. See *State v. Logan*, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013). In *Logan*, the Court explicitly found its “holding does not prevent the trial court from issuing the circumstantial evidence charge provided in *Grippon* and *Cherry*. However, trial courts may not exclusively rely on that charge over a

defendant's objection." *Id.* at 100, 747 S.E.2d at 452-53. Petitioner correctly points out that trial counsel did not object to the charge, thus not presenting the opportunity to argue for the *Logan* charge. Counsel testified at the evidentiary hearing that he did not object because he felt the charge was a correct statement of the law. Counsel did not object to the instruction given because he did not see any error.

Here, the trial court gave the following charge on circumstantial evidence:

Now, evidence in a case such as this, there are two types of evidence, which you generally consider. Quite frequently, they consist of both types. Sometimes one more than the other, but it really doesn't matter because it's customary to use both types of evidence.

One would be direct evidence. And direct evidence is typically testimony regarding a sensory perception. I saw something, I heard something, I felt something or the like. And if you are firmly convinced as to the truthfulness of that testimony, then it would establish that particular fact and circumstance.

The other would be circumstantial evidence. And that, unlike direct evidence, is when a person testifies of a number of facts. And if you're firmly convinced as to the reliability and the truthfulness of each of those facts and you link them, then either through deductively, deductive reasoning, you reach another conclusion, you reach another conclusion, that, likewise, if you're firmly convinced of that conclusion, it would establish that particular fact or conclusion.

I will tell you that it is quite common to use both and the law makes no distinction between the value or the weight to be given either to direct or circumstantial evidence. Nor is there any greater degree of certainty required of circumstantial evidence and direct evidence. Rather, you should weigh all of the evidence and decide what you find to be credible and believable.

Tr. 867-68. The language given by the trial court contains the correct definition and adequately covers the law as outlined in *Grippon*.

Petitioner argues that the circumstantial evidence charge given by the trial court differs from that in *Grippon* because it does not contain the language that “circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.” The State argues the language used by the trial court is sufficiently similar to the language in *Grippon* as to be permissible and accurately reflects the law. The trial court charged that the circumstantial evidence is a number of facts, when linked, one could use deductive reasoning to reach another fact or conclusion. This language as a whole, while admittedly not as eloquent as *Grippon*, correctly instructs the jury on the law as to circumstantial evidence. The trial court instructed the jury they can consider testimony concerning a number of facts, link those facts together (chain of facts), and arrive at another fact or conclusion.

Finally, Petitioner argues that both *Grippon* and *Logan* require that the trial court give a proper reasonable doubt charge and that viewing the trial court’s instruction as a whole it does not adequately cover circumstantial evidence or reasonable doubt. First, the State relies on its arguments above as to both instructions being proper and therefore Petitioner has failed to show how counsel was deficient for failing to object or any resulting prejudice that occurred from the alleged deficiency. Second, it appears that Petitioner is attempting to make a cumulative error argument, that Petitioner’s allegations have merit when viewed in conjunction with one another.

This argument is without merit, as trial counsel did not commit any errors and this Court has never recognized the cumulative-error doctrine as a basis for PCR. *See, e.g., Simpson v. State*, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006) (recognizing that “[w]hether several errors, which are independently found not to be prejudicial, may cumulatively warrant relief is an unsettled question in South Carolina” and holding that “[b]ecause the PCR court found that only one of Simpson’s allegations had merit, there was no need to conduct a cumulative-error analysis”);

*Green v. State*, 351 S.C. 184, 197, 569 S.E.2d 318, 324-25 (2002) (“Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.”).

Many other jurisdictions, including the Fourth Circuit Court of Appeals, have held a cumulative-error analysis of the prejudice prong of *Strickland* is inappropriate, and the correct analysis focusses upon each individual allegation of ineffective assistance. *Fisher v. Angelone*, 163 F.3d 835, 852-53 (4th Cir. 1998); *Wainwright v. Lockhart*, 80 F.3d 1226 (8th Cir. 1996); *Jones v. Sotts*, 59 F.3d 143, 147 (10th Cir. 1995). As the Fourth Circuit Court of Appeals explained in *Fisher v. Angelone*:

Fisher argues that the cumulative effect of his trial counsel’s individual actions deprived him of a fair trial. We disagree. Having just determined that none of counsel’s actions could be considered constitutional error. . . it would be odd, to say the least, to conclude that those same actions, when considered collectively, deprived Fisher of a fair trial. Not surprisingly, it has long been the practice of the Fourth Circuit individually to assess claims under *Strickland v. Washington*. . . . To the extent this Court has not specifically stated that ineffective assistance of counsel claims, like claims of trial court error, must be reviewed individually, rather than collectively, we do so now. In so holding, we are in agreement with the majority of our sister circuits that have considered the issue.

*Id.* (citations omitted). *See also, Mueller v. Angelone*, 181 F.3d 557, 586 n.22 (4th Cir. 1999)

(“Petitioner also urges us to consider the cumulative effect of his ineffective assistance of counsel claims rather than whether each claim, considered alone, establishes a constitutional violation. This argument is squarely foreclosed by our recent decision in *Fisher*, 163 F.3d [...at] 852-53 [...]”). The Fourth Circuit further explained, “legitimate cumulative-error analysis evaluates only the effect of matters actually determined to be constitutional error, not the cumulative effect of all of counsel’s actions deemed deficient.” *Fischer*, 163 F.3d at 852 n. 9

Petitioner has failed to show how counsel was deficient for failing to object to the circumstantial evidence charge and has failed to show any prejudice resulting from the alleged

deficiency. Therefore, this Court should dismiss this allegation and uphold the findings of the post-conviction relief court.

**The post-conviction relief court properly dismissed Petitioner's application where the Trial Court gave an adequate charge with regard to multiple defendants and the jury definitively understood the charge as given**

Petitioner alleges trial counsel was deficient for failing to request an adequate charge with regard to multiple defendants and failing to object to the charge given. Counsel was not deficient in failing to object where the trial court gave an adequate charge with regard to multiple defendants and the jury definitively understood the charge as given.

Petitioner specifically contends the following charge should have been given:

There are [two, three, etc.] defendants in this case. Each is charged with armed robbery or its lesser-included offense. Whatever verdict you find, it does not have to be the same as to [both] [all] defendants. You take each defendant, consider the evidence as to him, and write your verdict in accordance and in conformity with the evidence in the case and the instructions that I have given you and will hereafter give you. Where more than one person is charged with a crime, if the evidence warrants it, you may convict one and acquit the other, or you may acquit both, or you may convict both. It will depend upon your view of the testimony and evidence, which you alone are to pass upon.

Amendment to PCR Application (citing South Carolina Request to Charge-Criminal, Ralph King Anderson, Jr. § 1-27).

A jury charge is correct if, when it is read as a whole, it contains the correct definition and adequately covers the law.” *Adkins*, 353 S.C. at 318, 577 S.E.2d at 464. A jury charge which is substantially correct and covers the law does not require reversal. *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996). Furthermore, “the substance of the law is what must be charged to the jury, **not** any particular verbiage.” *Adkins*, 353 S.C. at 318-19, 577 S.E.2d at 464 (emphasis added).

Here, the trial court charged the jury: “[I]t’s important to realize that there are three separate indictments, three separate defendants and three separate determinations that you will have to make. And each party is entitled to a fair and impartial determination based on your assessment of the evidence.” Tr. 859. The trial court further charged the jury: “To assist you . . . in recording the verdict, I’ve prepared three verdict forms. That is necessary because there are three separate cases, as we have discussed.” Tr. 878.

Petitioner argues that counsel was deficient and prejudice resulted because the charge did not explicitly state to the jury that the verdicts for each defendant need not be the same. The charge given by the trial court itself, trial counsel’s testimony at the evidentiary hearing, and the actions of the jury show how Petitioner’s argument lacks merit. First, while not stating Petitioner’s requested language exactly, the charge given by the trial court clearly informs the jury they are to make three separate determinations their considerations. The trial court did explicitly say that the jury would have to make “three separate determinations” in reference to the defendants and further elaborates that the jury is to be given three separate verdict forms because there are three separate cases. The trial court made it abundantly clear that the jury was to consider each case separately. Second, counsel testified at the evidentiary hearing that the charge made it very clear that Petitioner and his co-defendants were individual defendants. Counsel further testified that it was apparent that the jury considered each defendant individually because they reached verdicts for Petitioner and one of his co-defendants before reaching a verdict on the third co-defendant. Finally, as stated just prior, the jury clearly understood that they were to consider each defendant individually as they returned verdicts on Petitioner and another co-defendant before reaching a verdict on the final co-defendant. The fact that the jury further deliberated as to the verdict of the third co-defendant definitively shows that they understood the trial court’s instruction and were considering each case

separately. Petitioner has failed to show any deficiency on the part of counsel for failing to object to a proper jury instruction given by the trial court and has failed to show any prejudice resulting from the alleged deficiency. Therefore, this Court should dismiss this allegation and uphold the findings of the post-conviction relief court.

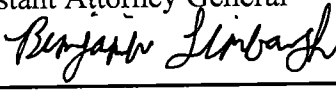
### CONCLUSION

For the foregoing reasons, this Court should deny this Petition for a Writ of Certiorari. Should this Court grant the petition, the State seeks permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON  
Attorney General

BENJAMIN HUNTER LIMBAUGH  
S.C. Bar No. 103334  
Assistant Attorney General

By: 

\_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

December 16, 2019

STATE OF SOUTH CAROLINA  
In the Supreme Court

RECEIVED

DEC 16 2019

CERTIORARI TO CHARLESTON COUNTY  
Court of Common Pleas  
The Honorable Michael G. Nettles, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2019-002156

KEENAN COAKLEY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

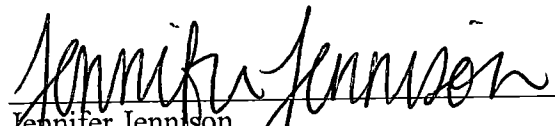
RESPONDENT.

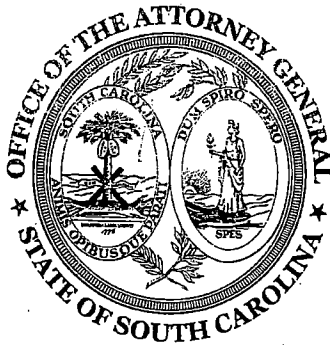
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by placing one copy in the United States Mail, addressed to:

**Kathrine H. Hudgins, Esquire**  
**S.C. Commission on Indigent Defense**  
**PO Box 11589**  
**Columbia, SC 29201**

This 16<sup>th</sup> day of December, 2019.

  
Jennifer Jennison  
Administrative Coordinator for Respondent



ALAN WILSON  
ATTORNEY GENERAL

RECEIVED

DEC 16 2019

S.C. SUPREME COURT

December 16, 2019

The Honorable Daniel E. Shearouse  
Clerk of Court — SC Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RE: Keenan Coakley v. State of South Carolina**  
**Appellate Case No.: 2019-002156**

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Return to Petition for Writ of Certiorari in the above matter for filing. Please let me know if anything additional is needed.

Sincerely,

Benjamin H. Limbaugh  
Assistant Attorney General  
S.C. Bar # 103334

BHL/jj  
Enclosures

cc: Kathrine H. Hudgins, Esquire  
Victim Advocacy Division